

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 4. Motion and Affidavit for Permission to Proceed in Forma Pauperis

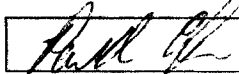
Instructions for this form: <http://www.ca9.uscourts.gov/forms/form04instructions.pdf>

9th Cir. Case Number(s) 23-15080

Case Name COLVIN VS. TAKO LLC

Affidavit in support of motion: I swear under penalty of perjury that I am financially unable to pay the docket and filing fees for my appeal. I believe my appeal has merit. I swear under penalty of perjury under United States laws that my answers on this form are true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Signature



Date

3/21/2023

The court may grant a motion to proceed in forma pauperis if you show that you cannot pay the filing fees **and** you have a non-frivolous legal issue on appeal.

Please state your issues on appeal. (*attach additional pages if necessary*)

COLVIN, believes judge Silva abused her discretion and denied the plaintiff due process by denying him the opportunity to respond to her court order. Judge Silva had issued an order for plaintiff Colvin to show cause why he should not be declared a vexatious litigant. Colvin response was due 12/09/2022 but before response became due Judge Silva closed Colvin case on 12/05/2022 Please see Exhibits #1-2.

When Judge Silva ordered Colvin case closed at the time she did not issue an order declaring Colvin a vexatious litigant. All Colvin knew was that his case was closed Colvin only became aware that Judge Silva had declared Colvin a vexatious litigant was in a unrelated case from Judge Gordon mentioning it in his order is how Colvin even became aware of Judge Silva order.

It was some 2-3 weeks later that Colvin recieved Judge Silva order Colvin believe his due process rights were violated because once Judge Silva dismissed his case he had know knowledge that Judge Silva had issued said order. Colvin also contends this is an act of abuse of discretion. Colvin believe his arguments have merit and he should be allowed to proceed in forma pauperis.

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1. For both you and your spouse, estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income Source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 0	\$	\$ 0	\$
Self-Employment	\$ 0	\$	\$ 0	\$
Income from real property (such as rental income)	\$ 0	\$	\$ 0	\$
Interest and Dividends	\$ 0	\$	\$ 0	\$
Gifts	\$ 0	\$	\$ 0	\$
Alimony	\$ 0	\$	\$ 0	\$
Child Support	\$ 0	\$	\$ 0	\$
Retirement (such as social security, pensions, annuities, insurance)	\$ 0	\$	\$ 0	\$
Disability (such as social security, insurance payments)	\$ 0	\$	\$ 0	\$
Unemployment Payments	\$ 0	\$	\$ 0	\$
Public-Assistance (such as welfare)	\$ 0	\$	\$ 0	\$
Other (specify) family	\$ 1400.00	\$	\$ 1400.00	\$
TOTAL MONTHLY INCOME:	\$ 1400.00	\$	\$ 1400.00	\$

2. List your employment history for the past two years, most recent employer first.
(Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross Monthly Pay
NONE		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>

3. List your spouse's employment history for the past two years, most recent employer first.
(Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross Monthly Pay
NONE		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>

4. How much cash do you and your spouse have? \$ 150.00

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount You Have	Amount Your Spouse Has
NONE		\$	\$
		\$	\$
		\$	\$
		\$	\$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishing.

Home	Value	Other Real Estate	Value
NONE	\$		\$

Motor Vehicle 1: Make & Year	Model	Registration #	Value
NONE			\$
Motor Vehicle 2: Make & Year	Model	Registration #	Value
NONE			\$

Other Assets	Value
NONE	\$ <input type="text"/>
<input type="text"/>	\$ <input type="text"/>
<input type="text"/>	\$ <input type="text"/>

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse	Amount owed to you	Amount owed to your spouse
NONE	\$ <input type="text"/>	\$ <input type="text"/>
<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>

7. State the persons who rely on you or your spouse for support. If a dependent is a minor, list only the initials and not the full name.

Name	Relationship	Age
EC	SON	10
MC	DAUGHTER	5
PC	SON	16

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 1800.00	\$
- Are real estate taxes included? <input type="radio"/> Yes <input type="radio"/> No		
- Is property insurance included? <input type="radio"/> Yes <input type="radio"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 300.00	\$
Home maintenance (repairs and upkeep)	\$ 150.00	\$
Food	\$ 300.00	\$
Clothing	\$ 300.00	\$
Laundry and dry-cleaning	\$ 100.00	\$
Medical and dental expenses	\$ 0	\$
Transportation (not including motor vehicle payments)	\$ 100.00	\$
Recreation, entertainment, newspapers, magazines, etc.	\$ 70.00	\$
Insurance (not deducted from wages or included in mortgage payments)		
- Homeowner's or renter's	\$ 0	\$
- Life	\$ 0	\$
- Health	\$ 0	\$
- Motor Vehicle	\$ 0	\$
- Other	\$	\$
Taxes (not deducted from wages or included in mortgage payments)		
Specify	\$	\$

	You	Spouse
Installment payments		
- Motor Vehicle	\$ 0	\$
- Credit Card (name) NONE	\$	\$
- Department Store (name) NONE	\$	\$
Alimony, maintenance, and support paid to others	\$	\$
Regular expenses for the operation of business, profession, or farm (attach detailed statement)	\$	\$
Other (specify) NONE	\$	\$
TOTAL MONTHLY EXPENSES	\$ 0	\$

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months? ☐ Yes ☒ No

If Yes, describe on an attached sheet.

10. Have you spent—or will you be spending—any money for expenses or attorney fees in connection with this lawsuit? ☒ Yes ☐ No

If Yes, how much? \$ 200.00

11. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

12. State the city and state of your legal residence.

City LAS VEGAS State NEVADA

Your daytime phone number (ex., 415-355-8000) (725) 800-6093

Your age 53 Your years of schooling 11

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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Parnell Colvin,

Plaintiff

v.

Tako, LLC,

Defendant

Case No. 2:22-cv-01928-CDS-NJK

Order Granting Motion to Remand,
Denying Motion for Removal, and
Closing Case

[ECF Nos. 2, 4]

Pro se plaintiff Parnell Colvin seeks, for the fourth time, to remove to this court the same eviction action brought against him by defendant Tako, LLC in the Las Vegas Justice Court. Removal Mot., ECF No. 2. Colvin alleges that this court has federal-question jurisdiction under 28 U.S.C. §§ 1331 and 1441(b). *Id.* He also alleges that this court has supplemental jurisdiction under 28 U.S.C. § 1367. *Id.* Tako filed an emergency motion to remand to state court. Remand Mot., ECF No. 4. Tako contends that this court lacks jurisdiction because there is no diversity of citizenship, as Colvin and the members of Tako are all residents of Clark County, Nevada. *Id.* at 3. And it alleges that there is no federal question, as this is a simple summary-eviction matter. *Id.* at 3. In his response, Colvin argues that Tako “illegally created a false fake lease contract, stole[] Ms. Brown[’s] identity which is identity theft, then forged her personal information on a[n] illegal[ly] created contract and signed her name.” Resp., ECF No. 8 at 4. For the reasons set forth herein, I hereby deny Colvin’s motion for removal and grant Tako’s motion to remand to state court.

1 I. Discussion

2 As a threshold matter, this court has no jurisdiction over this action. There is no federal-
3 question jurisdiction over the underlying litigation. United States District Courts have original
4 federal-question jurisdiction “of all civil actions arising under the Constitution, laws, or treaties
5 of the United States.” 28 U.S.C. § 1331. However, an action “arises under” federal law only if the
6 federal question appears on the face of the complaint. Here, Colvin alleges that federal-question
7 jurisdiction exists based on Tako’s violation of criminal statutes 18 U.S.C. §§ 1028 and 1343.
8 Compl., ECF No. 1 at 2; *see also* ECF No. 8 at 4–5. Yet for Colvin to “allege a claim under a federal
9 statute, the statute must provide for a private right of action.” *Riley v. Quality Loan Serv. Corp.*, 2019
10 WL 157838, at *2 (S.D. Cal. Jan. 10, 2019) (*see Touche Ross & Co. v. Redington*, 442 U.S. 560, 568
11 (1979)). For a private right of action to exist, the legislature must expressly state in a statute
12 that private persons have the right to sue if someone violates the law. The Ninth Circuit has held
13 that the criminal wire-fraud statute, 18 U.S.C. § 1343, “does not evince an intent by Congress to
14 create a private right of action.” *Id.*; *see also Chen v. T.T. Group*, 2014 WL 12613519 (C.D. Cal. May 29,
15 2014) (“18 U.S.C. §§ 1341 and 1343 are criminal wire fraud statutes. They do not create civil
16 causes of action, nor do they give this [c]ourt permission to hear state contract claims”). The
17 same is said for the violation of criminal statute 18 U.S.C. § 1028. *Murphy v. JP Morgan Chase*, 2015
18 WL 2235882, at *4 (E.D. Cal. May 11, 2015); *see also Lassetter v. Brand*, 2011 WL 4712188, *2 (W.D.
19 Wash. Oct. 4, 2011) (holding that 18 U.S.C. § 1028 provides no private right of action and cannot
20 form basis for civil suit).

21 Nor does this court have diversity jurisdiction over the underlying litigation. A federal
22 court’s diversity jurisdiction extends “to all civil actions where the matter in controversy
23 exceeds . . . \$75,000 . . . and is between . . . [c]itizens of different [s]tates.” 28 U.S.C. § 1332(a)(1).
24 This action involves Colvin—a Nevada resident who lives in the property at the heart of this
25 dispute—and Tako, a Nevada limited liability company. For purposes of diversity jurisdiction, a
26 limited liability company (LLC) has the citizenship of the state in which its members are

1 citizens. 28 U.S.C. § 1332(a)(1); *see also Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894 (9th
2 Cir. 2006). The members of Tako are residents of Clark County, Nevada. ECF No. 4 at 3.
3 Accordingly, complete diversity does not exist because Colvin and Tako are both Nevada
4 residents.

5 District courts have discretion to decline to exercise supplemental jurisdiction if: “(1) the
6 claim raises a novel or complex issue of [s]tate law, (2) the claim substantially predominates
7 over the claim or claims over which the district court has original jurisdiction, (3) the district
8 court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional
9 circumstances, there are other compelling reasons for declining jurisdiction.” 28 U.S.C. § 1367(c).
10 In evaluating these exceptions, I find that all weigh in favor of declining to exercise
11 supplemental jurisdiction. Colvin’s alleged claims do not raise a novel or complex issue of [s]tate
12 law, and as demonstrated *supra*, this court has no original jurisdiction over his allegations of
13 violations of federal statutes. In addition, courts may decline to exercise supplemental
14 jurisdiction “in the interests of judicial economy, convenience, fairness, and comity.” *Rutherford v.*
15 *Ara Lebanese Grill*, 2019 WL 1057919, at *3 (S.D. Cal. Mar. 6, 2019) (citing *Carnegie-Mellon Univ. v.*
16 *Cohill*, 484 U.S. 343, 357 (1988)). Thus, I find Colvin’s pattern of using the federal court system as
17 a loophole to delay the ongoing eviction proceedings brought against him by Tako in the Las
18 Vegas Justice Court as a compelling reason to decline supplemental jurisdiction.

19 Finally, this court does not have removal jurisdiction. A defendant may remove a civil
20 action from state court to federal court if original jurisdiction would have existed in the federal
21 court at the time the complaint was filed. 28 U.S.C. § 1441(a). On a motion to remand, the
22 removing defendant must overcome the “strong presumption against removal jurisdiction” and
23 establish that removal is proper. *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009)
24 (quoting *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)). Due to this strong presumption
25 against removal jurisdiction, the court resolves all ambiguity in favor of remand to state court.
26 *Gaus*, 980 F.2d at 566. Here, Colvin moved to remove the state-court proceeding to this court.

1 Not only is removal in this action not proper because this court does not have original
2 jurisdiction over the case, but also, **only defendants—not plaintiffs**—may remove civil actions
3 from state to federal court. 28 U.S.C. § 1446 (“A defendant . . . desiring to remove any civil action
4 from a [s]tate court shall file in the district court of the United States for the district and
5 division within such action is pending . . .”)(emphasis added). “The removal statute is strictly
6 construed, and any doubt about the right of removal requires resolution in favor of remand.”
7 *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009).

8 Consequently, given the “strong presumption” against removal jurisdiction, I find that
9 Colvin has not met his burden of establishing that removal is proper in this action. *Nishimoto v.*
10 *Federman-Bachrach & Assocs.*, 903 F.2d 709, 712 n.3 (9th Cir. 1990); *Emrich v. Touche Ross & Co.*, 846
11 F.2d 1190, 1195 (9th Cir. 1988). Because “the court resolves all ambiguity in favor of remand to
12 state court,” *Gaus*, 980 F.2d at 566, (9th Cir.1992), I grant Tako’s motion to remand to state
13 court.

14 **III. Conclusion**


15 IT IS THEREFORE ORDERED that plaintiff’s motion for removal [ECF No. 2] is
16 DENIED.

17 IT IS FURTHER ORDERED that defendant’s motion to remand [ECF No. 4] is
18 GRANTED.

19 IT IS FURTHER ORDERED that this case is remanded back to the Las Vegas Justice
20 Court, Clark County, Nevada, for lack of subject-matter jurisdiction.

21 The Clerk of Court is directed to CLOSE THIS CASE.

22 DATED: December 5, 2022

23
24 
25 Cristina D. Silva
26 United States District Judge

Activity in Case 2:22-cv-01928-CDS-NJK Colvin v. Tako, LLC Order to Show Cause

From: cmecf@nvd.uscourts.gov

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Date: Monday, November 28, 2022 at 01:08 PM PST

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United States District Court

District of Nevada

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Case Name: Colvin v. Tako, LLC

Case Number: 2:22-cv-01928-CDS-NJK

Filer:

Document Number: 10

Docket Text:

ORDER TO SHOW CAUSE Why Plaintiff Should Not Be Declared a Vexatious Litigant. Show Cause Response due by 12/9/2022. Signed by Judge Cristina D. Silva on 11/28/2022. (Copies have been distributed pursuant to the NEF - HAM)

2:22-cv-01928-CDS-NJK Notice has been electronically mailed to:

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Taylor Simpson taylor@kerrsimpsonlaw.com, anika@kerrsimpsonlaw.com, breana@kerrsimpsonlaw.com, jennifer@kerrsimpsonlaw.com, lisa@kerrsimpsonlaw.com, suzanne@kerrsimpsonlaw.com

Parnell Colvin pc681@yahoo.com

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